

APPEAL NO. 032288  
FILED OCTOBER 7, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 21, 2003, continued on May 27, 2003, and continued with the record closing on July 30, 2003. The hearing officer resolved the disputed issues by deciding that the respondent's (claimant) compensable injury of \_\_\_\_\_, does extend to and include an injury to the head, and that the claimant had disability resulting from the compensable injury of \_\_\_\_\_, beginning on July 7 and continuing through November 22, 2002. The appellant (carrier) appealed, arguing that the hearing officer's determinations are against the great weight and preponderance of the evidence. The claimant responded urging affirmance.

DECISION

Affirmed.

The claimant attached some documents to his response, some of which were not admitted into evidence at the hearing. Documents submitted for the first time on appeal are generally not considered unless they constitute newly discovered evidence. See *generally* Texas Workers' Compensation Commission Appeal No. 93111, decided March 29, 1993; Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ). In determining whether new evidence submitted with an appeal requires remand for further consideration, the Appeals Panel considers whether the evidence came to the knowledge of the party after the hearing, whether it is cumulative of other evidence of record, whether it was not offered at the hearing due to a lack of diligence, and whether it is so material that it would probably result in a different decision. See Texas Workers' Compensation Commission Appeal No. 93536, decided August 12, 1993. Upon our review, we cannot agree that the evidence meets the requirements of newly discovered evidence, in that the claimant did not show that the new evidence submitted for the first time on appeal could not have been obtained prior to the hearing or that its inclusion in the record would probably result in a different decision. The evidence, therefore, does not meet the standard for newly discovered evidence and will not be considered.

The claimant testified that he was employed as a busboy for the employer and that during the course and scope of his employment as he was lifting a table he hit his head on the edge of the table and injured his back on \_\_\_\_\_. The claimant contends that he sought medical treatment for his back pain and headaches on June 12, 2002. It is undisputed that the carrier has accepted a compensable injury to the back. The record reflects that the claimant went to the emergency room on July 7, 2002, and was hospitalized and underwent a "craniotomy for subdural hematoma evacuation" that same day. The claimant contends that his compensable injury of \_\_\_\_\_, extends to and includes an injury to his head. The claimant contends

that he had disability from July 7, 2002, when he was hospitalized for his head injury, to November 22, 2002, when he was released to full duty without restrictions.

The hearing officer did not err in determining that the compensable injury of \_\_\_\_\_, extends to and includes an injury to the head, and that the claimant had disability. Those determinations presented questions of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the trier of fact, the hearing officer resolves the conflicts and inconsistencies in the evidence and decides what facts the evidence has established. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). Nothing in our review of the record reveals that the hearing officer's extent-of-injury and disability determinations are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. As such, no sound basis exists for us to reverse the challenged determinations on appeal. Cain v. Bain, 709 S.W.2d 175.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **ROYAL INSURANCE COMPANY OF AMERICA** and the name and address of its registered agent for service of process is

**CORPORATION SERVICES COMPANY  
800 BRAZOS  
AUSTIN, TEXAS 78701.**

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Margaret L. Turner  
Appeals Judge

CONCUR:

\_\_\_\_\_  
Elaine M. Chaney  
Appeals Judge

\_\_\_\_\_  
Edward Vilano  
Appeals Judge